

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY SALUTE
Supervising Deputy Attorney General
3 HEATHER HUA
Deputy Attorney General
4 State Bar No. 223418
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2574
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-203

13 **PATROCINIA BARRERA ABOY**
1213 Resplendor Way
14 Oxnard, CA 93030

A C C U S A T I O N

15 Registered Nursing License No. 259335

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about August 31, 1975, the Board of Registered Nursing (Board) issued
24 Registered Nursing License No. 259335 to Patrocinia Barrera Aboy (Respondent). The license
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 June 30, 2011, unless renewed.
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1 6. Section 2761 states:

2 "The board may take disciplinary action against a certified or licensed nurse or deny an
3 application for a certificate or license for any of the following:

4 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

5 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
6 functions.

7

8 "(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
9 against a health care professional license or certificate by another state or territory of the United
10 States, by any other government agency, or by another California health care professional
11 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
12 action.

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14 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
16 Act] or regulations adopted pursuant to it.

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18 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
19 functions, and duties of a registered nurse, in which event the record of the conviction shall be
20 conclusive evidence thereof."

21 7. Section 2765 states:

22 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
23 charge substantially related to the qualifications, functions and duties of a registered nurse is
24 deemed to be a conviction within the meaning of this article. The board may order the license or
25 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
26 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
27 order granting probation is made suspending the imposition of sentence, irrespective of a
28 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person

1 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
2 of guilty, or dismissing the accusation, information or indictment.”

3 REGULATORY PROVISIONS

4 8. California Code of Regulations, title 16, section 1444, states:

5 “A conviction or act shall be considered to be substantially related to the qualifications,
6 functions or duties of a registered nurse if to a substantial degree it evidences the present or
7 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
8 safety, or welfare. . .”

9 COST RECOVERY

10 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 FIRST CAUSE FOR DISCIPLINE

15 (Conviction of Substantially Related Crime)

16 10. Respondent is subject to disciplinary action under Business & Professions Code
17 sections 490 and 2761, subdivision (f), in conjunction with section 2765 and California Code of
18 Regulations, title 16, section 1444, in that Respondent was convicted of a felonious crime
19 substantially related to the qualifications, functions or duties of a registered nurse which to a
20 substantial degree evidence her present or potential unfitness to practice as a registered nurse in a
21 manner consistent with the public health, safety, or welfare, as follows:

22 a. On or about September 28, 2005, after pleading guilty, Respondent was convicted of
23 one felony count of violating Penal Code section 368, subdivision (b)(1) [Elder abuse resulting in
24 death], in the criminal proceeding entitled *The People of the State of California vs. Patrocinia*
25 *Barrera Aboy* (Super. Ct. Ventura County, 2005, No. 2005012302). Respondent was sentenced
26 to formal probation for a period of 36 months with certain terms and conditions including fines.
27 Respondent was also ordered to complete 400 hours of Direct Work, pay \$1,681.99 in victim
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1 restitution, pay \$200 to the State Restitution Fund, and not own, operate or be employed by any
2 board and care facility designed to provide care to elderly or other individuals.

3 b. The circumstances surrounding the conviction are that on or about May 29, 2004,
4 Respondent was licensed to operate a residential care facility for the elderly. The victim was an
5 elderly patient at Respondent's residential care facility for the elderly and whose death was a
6 result of neglect under Respondent's care.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Discipline by Another State Agency)**

9 11. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4), in
10 that Respondent was disciplined by another state agency. Respondent was licensed and certified
11 to be an Administrator of residential care facilities for the elderly, which is regulated by the
12 California Department of Social Services. Respondent's license to operate residential care
13 facilities for the elderly was revoked in 2006 for numerous violations of Health & Safety Codes
14 by the California Department of Social Services.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct)**

17 12. Respondent is subject to disciplinary action under section 2761, subdivision (a) and /
18 or (d), in that Respondent committed acts of unprofessional conduct and/or violated provisions of
19 the Nursing Practice Act. Complainant refers to and by this reference incorporates the allegations
20 set forth above in paragraph 10, subparagraphs (a) and (b), inclusive, as though set forth fully.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

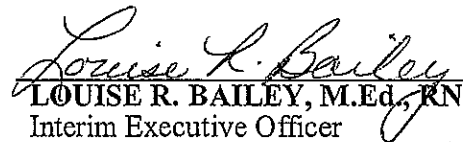
24 1. Revoking or suspending Registered Nursing License No. 259335, issued to Patrocinia
25 Barrera Aboy;

1 2. Ordering Patrocinia Barrera Aboy to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3; and

4 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: _____

9/3/10


LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant